

1988

Bette Wycalis v. CITY FEDERAL SAVINGS AND  
LOAN ASSOCIATION; GUARDIAN TITLE  
COMPANY OF UTAH and WARREN H.  
CURLISS, its President; U.S. LIFE OF UTAH,  
Trustee; CITY CONSUMER SERVICES, INC.,  
Bene\* ficiary; R. M. WALL; GARY L.  
MEREDITH and LYLE G. MEREDITH; ED  
MAAS; RANDY KRANTZ, B. BRAD  
CHRISTENSON, DEBRA CHRISTENSON, and  
JOHN DOES I through V : Reply Brief of

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Utah Supreme Court

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO. 880030 IN THE SUPREME COURT OF THE STATE OF UTAH

BETTE WYCALIS, )  
 )  
Plaintiff#Respondent, )  
 )  
vs. )  
 )  
CITY FEDERAL SAVINGS AND LOAN )  
ASSOCIATION; GUARDIAN TITLE )  
COMPANY OF UTAH and WARREN H. )  
CURLISS, its President; U.S. )  
LIFE OF UTAH, Trustee; CITY )  
CONSUMER SERVICES, INC., Bene4 )  
ficiary; R. M. WALL; GARY L. )  
MEREDITH and LYLE G. MEREDITH; )  
ED MAAS; RANDY KRANTZ, B. BRAD )  
CHRISTENSON, DEBRA CHRISTENSON, )  
and JOHN DOES I through V, )  
 )  
Defendants#Appellants. )

88-0030-CA

Case No.s 860172 and 860156

Priority No. 13b

FILED  
FEB 7 1986

REPLY BRIEF OF RESPONDENT BETTE WYCALIS  
(860156)

APPEAL FROM THE JUDGMENT OF THE SECOND JUDICIAL  
DISTRICT COURT IN AND FOR WEBER COUNTY, STATE  
OF UTAH, HONORABLE RONALD O. HYDE PRESIDING

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Christenson, Appellants  
#860156

IN THE SUPREME COURT OF THE STATE OF UTAH

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BETTE WYCALIS,	)	
	)	
PlaintiffRespondent,	)	
	)	
vs.	)	
	)	
CITY FEDERAL SAVINGS AND LOAN	)	
ASSOCIATION; GUARDIAN TITLE	)	
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ED MAAS; <u>RANDY KRANTZ, B. BRAD</u>	)	
<u>CHRISTENSON, DEBRA CHRISTENSON,</u>	)	
and JOHN DOES I through V,	)	
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REPLY BRIEF OF RESPONDENT BETTE WYCALIS  
(860156)

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SUMMARY OF ARGUMENT

So as to remove all doubt with respect to respondent Krantz' argument that the judgment was not final, Wycalis has filed a motion, pursuant to Rule 54(b) of the Utah Rules of Civil Procedure for a determination of finality of the summary judgment entered against her and in favor of Guardian Title.

Sufficient evidence of Guardian's breach of the fiduciary duty was presented at the trial level and the factual matters argued by Wycalis have not been waived.

## ARGUMENT

### POINT I

A MOTION, PURSUANT TO RULE 54(b), HAS BEEN FILED FOR A DETERMINATION THAT THE SUMMARY JUDGMENT ENTERED IN FAVOR OF GUARDIAN TITLE COMPANY AND WARREN H. CURLISS, ITS PRESIDENT, BE A FINAL JUDGMENT FOR PURPOSES OF APPEAL.

On December 18, 1986, plaintiff Bette Wycalis filed a motion with the District Court, pursuant to 54(b), Utah Rules of Civil Procedure, for an order that the judgment entered in favor of Guardian Title as against the claims of Wycalis be ordered final for purposes of appeal. It is anticipated that the trial court will so order.

### POINT II

SUFFICIENT EVIDENCE WAS PRESENTED TO THE TRIAL COURT TO SUPPORT A FINDING THAT GUARDIAN WAS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Respondent Krantz advances the position that Wycalis at trial did not raise facts concerning the second reconveyance by Guardian and therefore, this court cannot consider those matters. Krantz cites Turtle Management Inc. v. Haggis Management Inc., 645 P.2d 667 (Utah 1982), in support of this position. It is clear, however, that the authority cited by Krantz is distinguishable from the case at bar and that the facts relied upon by Wycalis in her appellant's brief were of record at the trial level. Specifically, in Turtle Management, this Court held that although defendant raised in their answer a defense, but failed to present any evidence at trial, and

failed to make any argument at trial, that this Court would not address that issue because the issue was not submitted to the trial court and the trial court did not have the opportunity to make any findings of fact. (Id. at 672.)

In the case at bar, the issue of trustee's liability was clearly presented to the trial court. (R. 440-446.) Further, the facts which Krantz contends this court cannot review were clearly of record (Wycalis' Memorandum in Opposition to Summary Judgment, Statement of Uncontested Fact #s 25-33, R. 437-438) and have been clearly referenced by respondent Guardian in their responsive Brief. (Guardian's Responsive Brief, Statement of Fact #15, page 5.) Consequently, Krantz's authority is distinguishable on its facts because in the Turtle Management case, the defense was not brought to the attention of the trial court and no evidence was presented. In contrast, the argument of the trustee's liability is squarely before the trial court, as were the facts of the second reconveyance, a point which is conceded by Guardian in their responsive brief before this court.

#### CONCLUSION

Plaintiff-Appellant Wycalis respectfully requests this Court reverse the trial court's summary judgment.

Dated: December 17, 1986.

  
SHERMAN C. YOUNG



MAILING CERTIFICATE

I hereby certify that on this 17 day of December, 1986,  
I caused to be mailed a true and correct copy of the foregoing  
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